

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SIMPLY FIT OF NORTH AMERICA, INC.,

Plaintiff,

-against-

CORT L. POYNER, et al.,

Defendants.
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ORDER

CV 07-5402 (ADS)(ARL)

LINDSAY, Magistrate Judge:

Before the court is the plaintiff's application dated March 5, 2008, seeking the court's intervention for an alternative means to serve the defendant Cort Poyner so that his testimony can be taken at the preliminary injunction by video or telephone. That application is denied as the issue has already been decided by Judge Spatt. Notably, at the February 6, 2008 conference, Judge Spatt stated:

I can't direct him to be here. In order for you to get him here, you have to subpoena him, and I suppose that that subpoena is not too valuable in Florida. It's a 100-mile range, I think.

Nonetheless, if Mr. Poyner wishes to testify, the court will permit him to testify by telephone or video given that he is gravely ill. If Mr. Poyner wishes to testify by alternative means he must give advance notice to the court and to the plaintiff. Mr. Poyner is warned that whether or not he appears, he will be bound by the determination of the court.

Dated: Central Islip, New York
March 7, 2008

SO ORDERED:

_____/s/_____
ARLENE R. LINDSAY
United States Magistrate Judge